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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 30788

THE JACK LINCOLN SHOPS, INC.,
Plaintiff in Error,

vs.

STATE DRY CLEANERS' BOARD, EVERETT BRYANT, AVA POWELL AND J. C. HARDIN, MEMBERS OF SAID BOARD, AND THE CHAIRMAN, AND SECRETARY-TREASURER, RESPECTIVELY, THEREOF; AND JOHN D. CASH, THE EXECUTIVE SECRETARY OF SAID BOARD,
Defendants in Error.

STATEMENT IN SUPPORT OF JURISDICTION.

The plaintiff in error, The Jack Lincoln Shops, Inc., in support of the jurisdiction of the Supreme Court of the United States to review the above entitled cause on appeal, respectfully states:

I.

Jurisdictional Statutory Provisions.

The statutory provision giving the Supreme Court of the United States jurisdiction of this appeal is Section 344 (a) of Title 28 of the United States Code, the pertinent part of which reads:

> "Section 344 (a). Final judgment or decree in any suit in the highest court of a state in which a decision

could be had * * * where is drawn in question the validity of a statute of any state, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and a decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

It is provided by Section 861 (a) of Title 28 of the United States Code that an appeal was substituted in place of the remedy of writ of error which was abolished.

II.

State Statutes the Validity of Which Is Involved.

The statutes of the State of Oklahoma, the validity of which has been sustained by a final judgment of the Supreme Court of Oklahoma, the highest Court of said State, as not being in violation of or repugnant to the Constitution of the United States, are Session Laws of Oklahoma 1941, Chapter 17; 5'9 O. S. A., Sections 741-756. The Act is one undertaking to regulate the cleaning, dying and pressing business, and contains the conventional provisions for that end. A brief summary of the Act follows:

A Board is created, styled "State Dry Cleaners' Board", which is empowered to supervise and regulate the cleaning, dyeing and pressing industry of the State; to promulgate general and special orders to that end; to issue certificates or licenses to engage in such business; to conduct investigations and hearings and subpoena witnesses and compel the production of documents; and any member of the Board or its designated employee may enter and inspect any such establishment.

The Board is expressly authorized to classify and grade cleaning, dyeing and pressing establishments and issue classified licenses which are required to be publicly posted.

There is no provision in the Act setting up a standard, guide or restrictions upon the exercise of the power of the Board to classify and grade establishments and the licenses granted to them. (The Board would have the power under this provision to refuse to grade an establishment as Class "A" and issue it a Class "A" license if it did not charge a certain minimum price for its services.)

The Act provides that no person shall engage in the cleaning, dyeing and pressing business until a license or certificate has first been secured so to do from the State Dry Cleaners' Board. A violation of this provision and of the statute is made a misdemeanor and a penalty is provided of a fine of from $10.00 to $500.00, and imprisonment of from five to thirty days, and each day's violation is made a separate offense.

The Act does not provide any rule or standard by which the Board shall be governed in the granting or refusal of licenses to persons applying for them, except that persons engaged in the cleaning, dyeing and pressing business at the time of the effective date of the Act are entitled to a license upon payment of the registration fees provided for in the Act.

The Board is authorized to require every licensee to maintain certain records, including: (1) a record of all expenses necessary or incident to the operation of such establishment; (2) a record showing the number of employees, wages paid, and hours of work performed; (3) the names of all persons financially interested in the operation of the business, together with the amount of each individual investment; and (4) any other records that the Board deems necessary. Each licensee is required to make reports to the Board, under oath, on forms prescribed by the Board, on all of the aforesaid matters upon which records are required to be kept.

The Act is made applicable to all persons, firms, corporations or associations engaged in the cleaning, dyeing and pressing business, which is defined:

> "(C) 'Cleaning, dyeing and/or pressing business' shall mean the operation of any establishment, plant, office, store or vehicle where dry cleaning, wet cleaning as a process incidental to dry cleaning, dyeing, spotting or finishing any fabric, is performed or rendered for a price or consideration, and where such service is sold, resold, or offered for sale or resale, and shall include the acceptance and transportation of any clothing or other fabric to be cleaned, pressed, or dyed, whether such service shall be rendered by the person so accepting or transporting such fabrics or by others."

III.

Date of Judgment and Date of Application for Appeal.

The date of the final decree of the Supreme Court of Oklahoma, which is now sought to be reviewed, was January 26, 1943. The plaintiff in error's petition for rehearing was denied on March 30, 1943. The date on which the application for appeal was presented and the appeal allowed was April 23rd, 1943, which is within three months of the date of the final decree sought to be reviewed. Section 350 of Title 28 United States Code provides that application for appeal may be made within three months after the entry of the final decree sought to be reviewed, and the aforsaid application was timely filed.

IV.

Nature of Case, and Rulings of the Court.

The plaintiff in error, an Oklahoma corporation with its principal place of business in Oklahoma City therein, is engaged in the cleaning, dyeing and pressing business,

operating some fifteen separate places of business and having a substantial investment therein.

After the aforesaid Act in question became effective, May 13, 1941, the defendants in error made demand upon plaintiff in error to file an application for a license or certificate, and pay a license fee, as required by said Act, and otherwise comply with the terms and provisions thereof, and threatened to institute criminal prosecution and otherwise interfere with the right of the plaintiff in error to conduct its business. Thereupon, plaintiff in error instituted this action in the District Court of Oklahoma County, Oklahoma, seeking an injunction restraining defendants in error from attempting to enforce the provisions of the aforesaid Act, upon the grounds that the same was void and in violation of the Fourteenth Amendment to the Federal Constitution.

The defendants in error answered, denying the unconstitutionality of the Act and expressly averring that it was not in contravention of the Fourteenth Amendment to the Constitution of the United States.

The Trial Court expressly found that this Act "is a valid Act and that said Act does not violate Section 1 of the Fourteenth Amendment to the Constitution of the United States." Plaintiff in error filed a motion for new trial, asserting error on the part of the court in holding the Act valid and not violative of Section 1 of the Fourteenth Amendment to the Constitution of the United States, which motion was overruled, and thereafter plaintiff in error appealed from said judgment and order of the District Court to the Supreme Court of Oklahoma, in accordance with the provisions of Chapter 15, Title 12 of the Oklahoma Statutes 1941, assigning as error the aforesaid holding of the Trial Court.

On January 26, 1943, the Supreme Court of the State of Oklahoma rendered a decree affirming the judgment of the

Trial Court. *Jack Lincoln Shops, Inc.* v. *State Dry Cleaners' Board, et al.*, not yet officially reported, 4 Oklahoma Bar Journal No. 5, Page 133, 134 Pac. (2d) —. The Supreme Court held: "That the business of cleaning. pressing and dyeing clothes is affected by the public interest so as to be subject to reasonable regulation under the police power"; and "the statute providing for the regulation of the business of cleaning, pressing and dyeing clothes (50 O. S. 1941, Secs. 741-756) is not unconstitutional as being violative • • • of the due process clause of the State (Section 7, Article 2) and Federal (14th Amendment) Constitutions as regards substantive due process."

V.

Substantiality of Questions Involved.

We respectfully submit that the questions involved are of a substantial nature and meet the requirements of the Supreme Court of the United States as set forth in *Hamilton* v. *Regents of the University of California*, 293 U. S. 245, 79 L. Ed. 343, and cases therein cited, wherein it was held that an appeal does not lack a substantial Federal question unless the contentions of the appellant are "clearly not debatable and utterly lacking in merit."

The contention of the plaintiff in error is that the cleaning, dyeing and pressing business is a private one not subject to the rigorous and expensive regulations to which a business of a public character and nature is amenable; and the aforesaid Act, Session Laws of Oklahoma 1941, Chapter 17; 59 O. S. A., Sections 741-756, unlawfully and in violation of the Fourteenth Amendment to the Federal Constitution, denies and unreasonably curtails the common right to engage in a lawful private business.

The decision of the Supreme Court of Oklahoma appealed from, holding the Act to be valid and not in violation of the

Due Process Clause of the Constitution, is by a divided Court. The Supreme Court of the United States in a case going up from Oklahoma which was very similar to the case at bar, *New State Ice Company* v. *Liebman*, 285 U. S. 262, 76 L. Ed. 747, declared unconstitutional as being in violation of the Fourteenth Amendment, an act undertaking to regulate the ice business, the Court saying with reference to the protection of private business under the Fourteenth Amendment from regulations:

> "Under that amendment nothing is more clearly settled than that it is beyond the power of a State, 'under the guise of protecting the public, arbitrarily to interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them' ".

There has been no decision by the Supreme Court of the United States with reference to acts regulating or licensing the cleaning, dyeing and pressing business, or similar enterprises.

There have been only two Federal decisions coming to our attention upon the question here involved, one upholding plaintiff in error's contention, and the other being adverse to it. The favorable decision, by a Three-Judge Court, is *Kent Stores of New Jersey* v. *Wilentz* (D. C., N. J.), 14 F. S. 1. The unfavorable decision, by a single Judge, is *Publix Cleaners* v. *Florida Dry Cleaning and Laundry Board* (D. C., Fla.), 32 F. S. 31.

Among the applicable State Court authorities there is a great diversity of opinion upon the question of whether or not an act of the type here involved contravenes the Fourteenth Amendment to the Federal Constitution. Among those supporting the contention of plaintiff in error are: *State* v. *Harris*, 216 N. Car. 746, 6 S. E. (2d) 854, 128 A. L. R. 658; *Becker* v. *State* (Del.) 185 Atl. 92, wherein statutes

regulating the dry cleaning, dyeing and pressing business in those States (similar to the Oklahoma statute) were stricken down as unconstitutional.

Most of the cases are collected in the recent annotation "Public Regulation of Dry Cleaning and Dyeing Establishments", 128 A. L. R., 678, and the cases therein cited are demonstrative of the meritorious, substantial Federal question presented by this appeal.

The cleaning, dyeing and pressing industry is one of substantial size, and is found in practically every town and hamlet throughout the United States. A large number of persons are engaged in such business, and they and the public generally are materially affected by the issues presented in this case, and the matter is one of national significance.

VI.

Cases and Statutes Sustaining Jurisdiction.

The following statutes and decisions sustain the jurisdiction of the Supreme Court of the United States of this appeal:

(1) Timeliness of appeal: Section 350 of Title 28 of the United States Code; *Aspen Mining & Smelting Company* v. *Billings,* 150 U. S. 31, 37 L. Ed. 986; *Gypsy Oil Company* v. *Esco,* 275 U. S. 498, 72 L. Ed. 393.

(2) Jurisdiction to entertain an appeal from the decision of a State Court on the ground that the State statute violates the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States: *Minneapolis, St. Paul & Sault Ste. Marie Railway Company* v. *Rock,* 279 U. S. 410, 73 L. Ed. 766; *Curry* v. *McCandless,* 307 U. S. 357, 83 L. Ed. 1339; *Hamilton* v. *Regents of the University of California,* 293 U. S. 245, 79 L. Ed. 343.

It is therefore respectfully submitted by the plaintiff in error, The Jack Lincoln Shops, Inc., that the Supreme Court of the United States has jurisdiction of this appeal by virtue of Section 344 (a) of Title 28 of the United States Code.

Respectfully submitted,

J. B. DUDLEY,
Apco Tower,
Oklahoma City, Oklahoma.

DUKE DUVALL,
Apco Tower,
Oklahoma City, Oklahoma.

Attorneys For Petitioner.

APPENDIX "A"

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA.

No. 30788.

THE JACK LINCOLN SHOPS, INC., *Plaintiff in Error,*

vs.

STATE DRY CLEANERS' BOARD; EVERETT BRYANT, AVA POWELL, and J. C. HARDIN, Members of said Board, and the Chairman, Vice-Chairman, and Secretary-Treasurer, respectively, thereof; and JOHN D. CASH, the Executive Secretary of said Board, *Defendants in Error.*

Syllabus.

1. The Legislature is primarily the judge of whether facts and conditions exist that make it advisable that any certain business be regulated for the public good, under the police power, and as to what means are best adapted to regulate it, and every possible presumption is to be indulged in favor of the correctness of such finding, and though the courts may hold views inconsistent with the wisdom of such legislation, they may not annul it as being in violation of substantive due process unless it is clearly irrelevant to the policy the Legislature may adopt or is arbitrary, unreasonable or discriminatory.

2. The inherent right to "life, liberty, the pursuit of happiness, and the enjoyment of the gains of their own labor" guaranteed to the people by Sec. 2, Art. 2 of the state constitution is subject to reasonable regulation in the exercise of the police power.

3. The statute providing for the regulation of the business of cleaning, pressing and dyeing clothes (59 O. S. 1941, # # 741-756) is not unconstitutional as being violative of Sec. 2, Art. 2 of the state constitution, or of the due process

clauses of the state (Sec. 7 Art. 2) and federal (14th Amendment) constitutions as regards substantive due process.

APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY, OKLAHOMA; HONORABLE LUCIUS BABCOCK, JUDGE.

Judgment Affirmed.

Dudley, Hyde, Duvall & Dudley, Oklahoma City, for plaintiff in error, Mac Q. Williamson, Attorney General; Fred Hansen, Assistont Attorney General; Houston E. Hill, Assistant Attorney General; Oklahoma City, and Busby, Harrell & Trice, Ada, for defendants in error.

HURST, *J:*

This case involves the constitutionality of 59 O. S. 1941, # # 741-756, regulating the business of cleaning, dyeing and pressing. The plaintiff, The Jack Lincoln Shops, Inc., which is engaged in that business in Oklahoma City, but without a license as required by the act, sued to enjoin the enforcement of the act. Evidence was introduced by both parties. From a judgment denying the injunction, plaintiff appeals.

The act creates a "State Dry Cleaners' Board"; defines its duties and powers; authorizes the board to issue annual licenses and to revoke the same; fixes the annual license fees at from $3.00 to $40.00, based upon the volume of business done; authorizes the board to cause those working in such establishments to submit to medical examinations, and to promulgate rules governing employees suffering from contagious or infectious diseases; authorizes the board to conduct hearings and make investigations; makes it a misdemeanor to engage in such business without a license; authorizes an appeal to the district court from any action of the board under the act; authorizes the board to require all licensees to keep certain records and to file reports with the board; authorizes the board to promulgate such rules and regulations as may be necessary to control the business of cleaning, dying and pressing with respect to identification of licensees, false or misleading advertisements and guarantees, forms of applications and licenses, classification

of licensees as to grade and requiring the public posting of same; and authorizes the board to enforce and assist in the enforcement of fire, sanitation, labor and other laws applicable to the industry. The act specifically provides that the board is not granted power "in any manner to fix prices."

Plaintiff contends that the act violates the due process clauses of the state (Sec. 7, Art. 2) and federal (14th amendment) constitutions. It also contends that it violates sec. 2, art. 2 of the state constitution which provides that "all persons have the inherit right to life, liberty, the pursuit of happiness, and the enjoyment of the gains of their own industry." It contends that the cleaning, dyeing and pressing business "is a lawful, legitimate, private one" and that while there are many abuses in it which "may be remedied by appropriate regulation" the law goes too far and that "control and supervision by licensing, and otherwise, as provided for under the act here" is not necessary. It admits that the rules followed in Herrin *v.* Arnold, 183 Okla. 392, 82 P. 2d 977, 119 A. L. R. 1471, sustaining the constitutionality of the law authorizing the fixing of minimum prices barbers may charge, "are difficult to overcome."

1. Several of the states have statutes very similar to the one here under consideration. The statutes were stricken down, as being in violation of the due process clause, in its substantive aspect, in Kent Stores *v.* Wilentz, (1936) 14 F. Supp. 1, (New Jersey Statute); Becker *v.* State, (1936) 37 Del. 454, 185 Atl. 92, and State *v.* Harris, (1940) 216 N. C. 746, 6 S. E. 2d 854, 128 A. L. R. 658, and upheld in Miami Laundry Co. *v.* Florida Dry Cleaners, (1938) 134 Fla. 1, 183 So. 759, 119 A. L. R. 956. In Smith Bros. Cleaners & Dyers *v.* People, (1941) 108 Colo. 449, 119 P. 2d 623, it was held that the section of the law authorizing the state board to fix minimum prices invalid in that it did not afford procedural due process of law. The regulatory features of the act were upheld and it was said that the price fixing feature could be enacted under the police power of the state without denying substantive due process. The North Carolina, Florida and Colorado cases, above, were by divided courts. An examination of the majority and dissenting opinions in the cited cases discloses that those sustaining such legislation are based upon the recent decisions of the

United States Supreme Court, dealing with the due process clause, such as Nebbia *v.* New York, 291 U. S. 502, 54 S. Ct. 505, 514, 78 L. Ed. 940, 89 A. L. R. 1469; West Coast Hotel Co. *v.* Parrish, 300 U. S. 379, 57 S. Ct. 578, 81 L. Ed. 703, 108 A. L. R. 1330; Townsend *v.* Yeomans, 301 U. S. 441, 57 S. Ct. 842, 81 L. Ed. 1210; Olsen *v.* State of Nebraska, 313 U. S. 236, 61 S. Ct. 862, 85 L. Ed. 1305, 133 A. L. R. 1500, while those condemning the statutes generally rely on the earlier United States Supreme Court decisions, such as Adkins *v.* Children's Hospital (1923), 261 U. S. 525, 43 S. Ct. 394, 67 L. Ed. 785, 24 A. L. R. 1238, which were departed from or overruled in the later cases. We are committed to the doctrine of the later cases (Herrin *v.* Arnold, above; Asosciated Industries *v.* Industrial Welfare Com., 185 Okla. 177, 90 P. 2d 899) which is that any business affected with a public interest is, under the police power of the state, subject to reasonable regulation for the public good; that there is no closed class or category of business effected with a public interest but that the limitations on the exercise of the police power are plastic and will expand and adjust themselves to meet the needs of an advancing and changing civilization (11 Am. Jud. 1044); that the question as to what businesses are affected with a public interest, so as to be subject to regulation under the police power (11 Am. Jur. 1060), and the means best adapted to regulate them (11 Am. Jur. 1065), are primarily legislative questions, and the courts should indulge every possible presumption in favor of such statutes, and will not strike them down as being in violation of substan*t*itive due process unless they are clearly irrelevant to the policy the Legislature may adopt or are palpably unreasonable and arbitrary. Nebbia *v.* New York, above; 11 Am. Jur. 1081-1091; 12 C. J. 932, # 443.

That the statute in question was enacted under the police power is shown by the fact that it contemplates that the regulation will be with reference to the public health, the public safety with reference to fire hazards, and the general welfare with reference to the enforcement of the labor laws and to prevent misleading or false advertisements or guarantees. The police power is the power to enact laws "to promote the order, safety, health, morals, and general welfare of society." 11 Am. Jur. 1014-1037; 12 C. J. 904.

The business of conducting cleaning, pressing and dyeing establishments is closely akin to the business of conducting laundries, and in fact they are frequently conducted as one business. In 33 Am. Jur. 1-13 they are treated as being in the same category. And we have held that laundries may be regulated under the police power. Walcher *v.* First Presbyterian Church, 76 Okla. 9, 184 P. 106, 6 A. L.R. 1593. See also 12 C.J. 924, note 97.

We think the better view, legally speaking, and the one in accord with our decision in Herrin *v.* Arnold, above, is that the legislative determination that the business of cleaning, pressing and dyeing clothes is affected with a public interest so as to be subject to reasonable regulation under the police power should be given effect by the courts. 33 Am. Jur. 3; 49 A.L.R. 110, note; 128 A.L.R. 678, note. The evidence introduced in the present care justifies this view. And as above stated, the plaintiff does not seriously question that this is so.

The question, then, is whether the present statute is palpable unreasonable and arbitrary in its requirements. The plaintiff points to no such provision unless it be the licensing feature. It does not contend that the license fees charged are unreasonably high. It says that the power to license carries with it the power to condition and prohibit, [fol. 238] and that under its power to classify establishments it may fix prices, though it seems to admit that a provision for price fixing would not necessarily be fatal. But we must assume that the board will make no unreasonable requirements or rules, or otherwise violate the letter or spirit of the law, and if it does the aggrieved party will then have his remedy. We are unable to say that the determination of the legislature that the business may best be controlled by licensing is unreasonable or arbitrary. See 33 Am. Jur. 5, 330, 336. It is not for us to say that a better method could be found, or that the method adopted is unwise, Nebbia *v.* New York, above.

We conclude that the law does not violate the due process clause in its substantive aspect. It is not contended that plaintiff and those coming under the act are denied procedural due process.

In its brief plaintiff suggests that "the judicial department should keep a close eye on the many regulations imposed upon private business", that there must be a "stop signal" on such regulation, and that if this act is upheld other like encroachments upon private business will follow. This argument should be addressed to the policy forming branches of the government, the Legislature and Governor. If, as many believe, the trend in the direction of regimentation of the people, by the creation of administrative boards and commissions, has the effect of fostering monopoly, [fol. 239] stifling competition, forcing out of business those who cannot comply with such laws and the regulations made thereunder, and holding up prices artificially, and is not wholesome, it is for the people, under a republican form of government, to erect the "stop signals", if they need to be erected. The courts are concerned only with the power to enact laws and their meaning. It is not for the courts to assume the right to pass upon the wisdom of such laws or to warn the legislative and executive branches. The tri-partite theory of governments prevents us doing so.

2. For the reasons above given, the act does not deprive plaintiff of rights guaranteed it by Sec. 2, Art 2 of the Constitution. Those rights are subject to reasonable regulation under the police power. By complying with the law and valid rules and regulations that may be made thereunder, the plaintiff may continue to enjoy the rights thus guaranteed. Herrin *v.* Arnold, above: Croxton *v.* State, 186 Okla. 249, 97 P. 2d. 11.

It is not contended that the statute delegates legislative power to the administrative board created to administer it, or that it violates any other constitutional provision.

Judgment affirmed.

Gibson, V. C. J. Riley, Osborn, Davison and Arnold, J. J. concur. Corn, C. J. Bayless and Welch, J. J. dissent.

Filed in Supreme Court of Oklahoma Jan. 26, 1943. Andy Payne, Clerk.

DECISIONS PER CURIAM, ETC., FROM JUNE 15, 1943, THROUGH JUNE 21, 1943.*

No. 1056. JACK LINCOLN SHOPS, INC. *v.* STATE DRY CLEANERS' BOARD ET AL. Appeal from the Supreme Court of Oklahoma. June 21, 1943. *Per Curiam:* The appeal is dismissed for want of a substantial federal question. *Nebbia* v. *New York*, 291 U. S. 502; *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379; *Olsen* v. *Nebraska*, 313 U. S. 236; and *Dunn* v. *Ohio*, 318 U. S. 739. MR. JUSTICE ROBERTS took no part in the consideration or decision of this case. *Messrs. John B. Dudley* and *Duke Duvall* for appellant. Reported below: 192 Okla. 251, 135 P. 2d 332.